

REMARKS

Claim 7 has been cancelled, and Claim 1 has been amended to more definitely set forth the invention and obviate the rejections. Support for the amendment of claim 1 may be found in original claims 2 and 3, as well as in the Specification, on page 5, lines 15-25, and page 27, lines 17-19. This amendment is deemed not to add new matter. Claims 1-2 and 5-6 are now in the application.

Reconsideration is respectfully requested of the rejection of claim 1 under 35 U.S.C. 102(b), as being anticipated by JP Abstract 59-148713.

The cited JP 59-148713 reference, which is assigned to the present assignee, discloses a pencil-type cosmetic which contains, among other components, powder. It is an object of this reference to provide a cosmetic which avoids "bleeding" of the powder, i.e., the composition retains the powder therein without extrusion there from. Furthermore, the disclosed cosmetic provides a soft-touch to the user.

In contrast, the present invention, as now claimed in amended claim 1, provides a substantially ceresin-free lipstick composition comprising:

- (a) polyethylene wax having an average molecular weight of 300-700,
  - (b) microcrystalline wax; and
  - (c) 0.1-50 mass % of one, two or more liquid oils having one -OH group in the structure,
- wherein polyethylene wax and microcrystalline wax are blended in a mass ratio of 6:4 - 9:1, polyethylene wax and the microcrystalline wax are blended so as to comprise 3-25 mass% of the composition, and the composition contains substantially no ceresin.

The cited JP 59-148713 reference fails to disclose both the microcrystalline wax, and the mass ratio of polyethylene wax to microcrystalline wax, both of which are claimed herein. In the instant Office Action, the Examiner has failed to point to those specific portions of the cited reference upon which the Examiner is relying to provide support for disclosure of the elements of the present invention mentioned above. In addition, claim 1 as amended herein now calls for the absence of ceresin, which is not disclosed by the JP 59-148713. The ability to retain superior lipstick characteristics without the use of ceresin is a main object of the present invention, and is neither disclosed nor suggested in the cited reference.

The elements discussed above, and now clearly claimed herein, are disclosed only in the present invention, and constitute important elements or aspects thereof. In view of the amendments to the claims made herein, and the deficiencies of the cited reference pointed out above, it is believed that the Examiner would now be justified in no longer maintaining the rejection. Withdrawal of the rejection is accordingly respectfully requested.

Reconsideration is respectfully requested of the rejection of claims 1-4 under 35 U.S.C. 103(a) as being unpatentable over Soyama, et al. (USP 5,672,339).

The cited Soyama, et al. reference discloses a composition for rouge to be applied to the lips. It is a primary object of the inventors thereof to provide a rouge having improved secondary adhesion, i.e., a lip rouge which tends not to transfer from the lips of the user onto other objects such as cups, etc., after application of the rouge onto the lips.

In order to achieve this object, Soyama, et al. provide a rouge comprising a volatile oil, a water-repellent polymer soluble in the volatile oil, a powder, and a nonvolatile oil compatible with the volatile oil. Importantly, as the shape-retaining agent, a wax is used. Importantly, in the great majority of the embodiments therein in which the rouge is in the form of a lipstick, the composition contains ceresin wax as the shape retaining agent (see Examples 1-1, 2-1, 2-2, 2-4, 3-1, 4-1, 4-2, 4-3, 4-5, 5-1, 6-1, 6-4, 7-1, 7-2 and 7-4).

In contrast, it is an object of the present invention to provide a lipstick composition which drastically improves the color development related to the basic usability of a lipstick, is superior in terms of spreadability, gloss, and long-lastingness, and has "a superior shape-retaining ability, essentially without using ceresin which is conventionally used as a shape-retaining agent" (see Specification, page 2, lines 8-11). Importantly, the present lipstick composition provides the same or better shape-retaining characteristics of the cited Soyama, et al. lipstick compositions **WITHOUT USING CERESIN WAX** as a shape-retaining agent therein.

In an effort to more clearly distinguish from the Soyama, et al. reference, and to emphasize these important characteristics, claim 1 has been amended herein to now call for a lipstick composition comprising:

- (a) polyethylene wax having an average molecular weight of 300-700,
  - (b) microcrystalline wax; and
  - (c) 0.1-50 mass % of one, two or more liquid oils having one -OH group in the structure,
- wherein polyethylene wax and microcrystalline wax are blended in a mass ratio of 6:4 - 9:1, polyethylene wax and the microcrystalline wax are blended so as to comprise 3-25 mass%

of the composition, and the composition contains substantially no ceresin.

It is respectfully submitted that, only with the combination now claimed herein, may a lipstick be obtained having superior shape-retaining ability, spreadability, gloss, and long-lastingness, without using ceresin (which is conventionally used as a shape-retaining agent).

As illustrated in Examples 11-13 of the present invention, compositions were prepared so as to contain polyethylene wax, microcrystalline wax, and glyceryl diisostearate, as claimed in claims 1 and 2 herein. As shown in Table 2, on page 15 of the Specification, Examples 11-13, which do NOT contain ceresin wax, illustrated excellent **SHAPE-RETAINING ABILITY**, coloring, spreadability, gloss and long-lastingness. Importantly, it should be noted that, by combining polyethylene wax and microcrystalline wax in the claimed ratios, excellent shape-retaining characteristics were unexpectedly obtained WITHOUT the use of ceresin wax, which were equivalent to the shape-retaining characteristics of Comparative Example 8, which contained ceresin wax. Further, it was unexpectedly discovered that a synergistic improvement in the color development of the lipsticks of the present invention could be obtained, without sacrificing spreadability, gloss and long-lastingness, when blending components (a) and (b) in the claimed mass %'s and ratios (see Specification, page 16, second paragraph).

In view of the above amendments, the showings of unexpectedly superior properties of the lipstick of the present invention (while lacking the conventionally used ceresin wax), and the arguments presented above, it is believed that the Examiner would now be justified in withdrawing the rejection. Withdrawal of the rejection is accordingly respectfully requested.

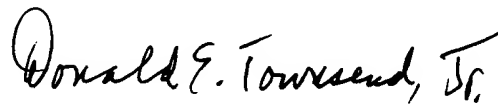
In view of the foregoing, it is respectfully submitted that the application is now in condition for allowance, and early action and allowance thereof is accordingly respectfully requested. In the event there is any reason why the application cannot be allowed at the present time, it is respectfully requested that the Examiner contact the undersigned at the number listed below to resolve any problems.

Respectfully submitted,

TOWNSEND & BANTA

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Donald E. Townsend  
Reg. No. 22,069

A handwritten signature in black ink, appearing to read "Donald E. Townsend, Jr.". The signature is cursive, with a large initial "D" and "T".

Donald E. Townsend, Jr.  
Reg. No. 43,198

TOWNSEND & BANTA  
601 Pennsylvania Ave., N.W.  
Suite 900, South Building  
Washington, D.C. 20004  
(202) 220-3124

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